IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No.1221 of 2001.

Judgment Reserved on:15.05.2007.

Date of decision: 21.05.2007.

Hira Singh ….**Petitioner**

Versus

Union of India and others ……**Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Petitioner: **Mr.H.K. Paul, Advocate.**

For Respondents 1 to 3: **Mr.Sandeep Sharma, Assistant Solicitor General of India.**

Dev Darshan Sud, J.

This writ petition has been preferred by the petitioner challenging the order passed by the respondents proposing to impose penalty of dismissal and altering it to reduction of rank (Annexure P-21), and order dated 29.08.2001 (Annexure P-24) passed by the Appellate Authority rejecting the appeal of the petitioner.

Brief facts of the case are that disciplinary proceedings were initiated against the petitioner for making anonymous complaint against his Commandant, levelling various allegations against him. Memorandum of

---

[1] ***Whether reports of Local Papers may be allowed to see the judgment?***

charges was issued against the petitioner and an inquiry conducted. The petitioner was found guilty of the charges as levelled. Vide Annexure P-21, the Deputy Inspector General, SSB, Shimla, held that the petitioner was guilty of the charges. Punishment of dismissal from service was proposed, however, on the representation against the inquiry report which was made by the petitioner, the punishment was reduced to reversion from the rank of L.Naik to that of Constable with cumulative effect. Being aggrieved, the petitioner preferred an appeal vide Annexure P-23 detailing the circumstances which according to him, rendered the inquiry violative on the principles of natural justice. He had submitted detailed grounds for consideration by the Appellate Authority. Vide Annexure P-24 the appeal was dismissed. While disposing of the appeal, the Appellate Authority observed that the charges have been proved against the petitioner. It was also observed in the order that the petitioner was examined by the Appellate Authority personally on 8.8.2001 at the Divisional Headquarters during which period he admitted having written the anonymous complaint. The relevant portion of the order reads as under:-

> *"…..Even during personal hearing he admitted having written anonymous complaint".*

Learned counsel appearing for the petitioner submits that the appeal should have been disposed of by a

speaking order. For this purpose, he relied upon ***Narinder Mohan Arya*** *vs.* ***United India Insurance Co.Ltd. and others, (2006) 4 SCC 713***, wherein it has been held:-

> **"33.** An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regards the compliance with the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.
>
> **34.** In *Apparel Export Promotion Council* v. *A.K. Chopra* which has heavily been relied upon by Mr. Gupta, this Court stated: (SCC p770, para 16)
>
> "16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and *in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities."*
>
> (emphasis supplied)
>
> **35.** The Appellate Authority, therefore, could not ignore to exercise the said power.
>
> **36.** The order of the Appellate Authority demonstrates total non-application of mind. The Appellate

Authority, when the Rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as to enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression "consider" is of some significance. In the context of the Rules, the Appellate Authority was required to see as to whether *(i)* the procedure laid down in the Rules was complied with; *(ii)* the enquiry officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and *(iii)* whether penalty imposed by the disciplinary authority was excessive.

37. In *R.P. Bhatt* v. *Union of India* this Court opined : (SCC p. 654,paras 4-5)

"4. The word 'consider' in Rule 27 (2) implies 'due application of mind'. It is clear upon the terms of Rule 27 (2) that the Appellate Authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing, etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27

> (2) casts a duty on the Appellate Authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.
>
> "5. There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (c) of Rule 27 (2) viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27 (2) of the Rules, the impugned order passed by the Director General is liable to be set aside."

There is merit in the submissions made by the learned counsel appearing for the petitioner. Without entering into the other controversy or the points which have been raised by the petitioner, this writ petition is partly accepted and the appeal is remanded to the Appellate Authority for decision afresh. Of-course, while disposing of the appeal on the various grounds which have been raised by the appellant, the Appellate

Authority will keep in mind the record which contains an admission having been made by the petitioner and the fact that he was given a personal hearing. The appeal will be disposed of within a period of two months from today. There shall be no order as to costs.

May 21, 2007. **(Dev Darshan Sud)**
(aks) **Judge.**